IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 309 OF 2004

Shri Anthony F. D'Souza, son of
late Norbert D'Souza, major,
Contractor, residing at H.No.66,
Near Holy Cross Chapel,
Fudlam Vaddo, Nagoa, Bardez, Goa. ..... Petitioner.

V/s.

Shri Joseph Bernard Nazare, son of
the late Antonio Xavier B.
Nazare, major, married, businessman,
residing at H.No.145, Bairo, Alto,
Assagao, Bardez, Goa. ..... Respondents.

Mr. Nitin Sardessai, Advocate for the petitioner.

Mr. F.E. Noronha, Advocate for the respondent.

CORAM : B.H. MARLAPALLE, J.

DATE : OCTOBER 28, 2004.

ORAL JUDGMENT :

Heard. Rule.

Mr. Noronha waives service for the respondent.

Rule taken up for hearing forthwith.

2 In Special Civil Suit No.84/2003, the defendant had filed applications at Exhibits 9 and 10, praying to codone the delay in filing the written statement and to accept the written statement which was

filed beyond the period of 90 days. By filing say, these applications were opposed by the plaintiff. The learned Civil Judge, Sr. Division, Mapusa by the impugned Order dated 4th June, 2004 was pleased to reject these applications on the two grounds, viz. (a) the provisions of Section 148 of C.P.C. could not be invoked for extension of time to file written statement, and (b) the law laid down by this Court in the following two decisions did not permit extension beyond 90 days. (i) **Dr. (Mrs.) Shailaja A. Sawant vs. Sayajirao Ganpatrao Patil,** (2004) 15 ILD 600; and (ii) **Iridium India Telecom Ltd., vs. Motorola Inc. & Ors.** 2004 (1) ALL MR 418.

3. The issue of granting extension beyond 90 days to file written statement was referred to a Larger Bench in view of the conflicting opinions recorded by different single Judges of this Court. In case of **Chintaman Sukhdeo Kaklij & ors. vs. Shivaji Bhausaheb Gadhe & ors.,** 2004(5) Bom. C.R. 573, the Division Bench has held that Rules 9 and 10 of Order 8 C.P.C. give discretion to the trial Court to allow the defendant to file written statement after the expiry of the period of 90 days as contemplated by Order 8 Rule 1. The Court clarified that this did not mean that the order of extending time to file written statement can be granted casually and unmindful of provisions that extension would not exceed 90 days. It has been stated that the provisions of Order 8, Rule 1 always be kept in mind while passing order extending time for filing written statement and ordinarily such extension shall not be granted except

in exceptional and special circumstances.

4. In view of the law laid down by the Division Bench of this Court in the case of C**hintaman Sukhdeo Kaklij & ors. vs. Shivaji Bhausaheb Gadhe & ors. (supra),** the view taken by the trial Court in the impugned Order is required to be reconsidered by the same Court, and, therefore, it will be necessary to remand the applications at Exhibits 9 and 10 for fresh decision.

5. The petition is, therefore, allowed partly and, the impugned order dated 4.6.2004 is, hereby quashed and set aside. The applications at Exhibits 9 and 10 are restored to the file of the trial Court and it is directed that they shall be decided keeping in view the law laid down by this Court in the case of C**hintaman Sukhdeo Kaklij & ors. vs. Shivaji Bhausaheb Gadhe & ors. (supra),** after hearing the parties and as expeditiously as possible and, in any case, within a period of two months from the date of first appearance. Parties to appear before the trial Court on 26th November, 2004. Rule made absolute accordingly, but without any order as to costs.

B.H. MARLAPALLE, J.

ssm.